

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 22ND NOVEMBER 2007 / 1ST AGRAHAYANA 1929

CRP.No. 229 of 2000(E)

M.10673/1980 of TALUK LAND BOARD, KANAYANNUR

REVN. PETITIONER: DECLARANT:

RATNAKALA BAI, W/O.BALACHANDRA KAMMATH,
CHETTIPADATH HOUSE, PONNARIMANGALAM DESOM,
MULAVUKADU VILLAGE, KANAYANNUR TALUK.

BY ADV. SRI.S.SREEKUMAR

RESPONDENTS:

1. STATE OF KERALA, REPRESENTED BY ITS
SECRETARY (LAND REFORMS),
GOVERNMENT SECRETARIAT, TRIVANDRUM.
2. THE TALUK LAND BOARD, KANAYANNUR.

BY GOVERNMENT PLEADER SRI.K.G.BHASKARAN

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 22/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.T.SANKARAN, J.

C.R.P. NO. 229 OF 2000 E

Dated this the 22nd day of November, 2007

ORDER

It is unfortunate that the ceiling area fixed in the ceiling case against the declarant, Govinda Prabhu, in the proceedings initiated in 1976, could not be taken possession of even after the lapse of 30 years. Though several orders were passed by the Taluk Land Board, none of those orders give a correct picture of the case put forward by the parties. So that, at every point of time, the High Court had to set aside those orders and remand the matter to the Taluk Land Board. Four such orders were passed by the High Court. Still the matters are not clear. Grievances remain that the case of the petitioner is not considered and disposed of on the merits. On going through the file of the Taluk Land Board, I have noticed that the Taluk Land Board is aware of the full facts because in certain letters and proceedings several details are given. But those details, unfortunately, do not find a place in any of the orders passed.

2. As per the final order, dated 24.06.1976, the Taluk Land Board found that the declarant is holding land in excess of the ceiling area. The declarant was directed to surrender an extent of 6.03.875 ordinary acres equivalent to 4.12.625 standard acres. That order was challenged by the declarant in C.R.P.No. 4858 of 1978 which was disposed of by this court

as per order dated 07.08.1978. The order passed by the Taluk Land Board was set aside and the case was remanded for fresh disposal. After remand, the Taluk Land Board passed an order, dated 27.10.1980. It was held that the declarant was liable to surrender an extent of 5.87.255 acres of land. Against the order, dated 27.10.1980, C.R.P.No.3132 of 1980 was filed by the legal representatives of the declarant. That Revision was allowed as per order dated 7.12.1981, and the matter was remanded. On 30.1.1986, the Taluk Land Board passed a revised order and the declarant was directed to surrender the balance extent of 1.68.050 acres of land.

3. Challenging the order dated 30.1.1986, C.R.P.Nos.522, 526, 527, 541, 543 and 544 of 1986 were filed by the declarant and certain claimants. The said Revisions were disposed of by the order dated 15.2.1988. The relevant portion of the order is as follows:

“4. The petitioners have already surrendered some lands. What remains to be surrendered measures 1.68.050 acres in extent. The above extent can be taken from the land mentioned above, and comprised in Sy.Nos.125/2, 125/3, 60/1, 6 and 7. This aspect of the case has not been considered by the Taluk Land Board properly. Merely because a 66 KV electric line passes above a particular land, it cannot be said that it is not fit for surrender. A reference in this connection to sub-section 6 of Section 85 is relevant. This is a matter that requires to be enquired into by the Taluk Land Board, afresh.

5. The order under challenge is therefore set aside and the matter is remitted back to the Taluk Land Board for

a denovo consideration. The Taluk Land Board, while considering the issue, would keep in mind the report of the Deputy Tahsildar mentioned above. The Taluk Land Board shall give the petitioners an opportunity to make representation to the Surveyor and such other Revenue Officials who will conduct an on the spot enquiry before the matter is finally disposed of.”

Thereafter, the Taluk Land Board passed an order, dated 21.6.1999, which is impugned in this Revision by Ratnakala Bai, one of the claimants. It is stated in the order that an opportunity of being heard was afforded to the petitioner and other claimants. The Deputy Tahsildar (LR) was given a direction to conduct an enquiry and report the extent of land belonging to the declarant available in Mulavukad Village. It is stated that a report was filed. An extent of 11.575 cents in Sy.No.125/2 and 5.4 cents in Sy.No.125/3 were found available for taking possession. It is also stated that an extent of 11.575 cents is lying under a High Tension Electric line and that 5.4 cents is in “adverse possession”. Who claimed “adverse possession” is not stated. It is also not stated whether these lands could be taken possession of. The Taluk Land Board further stated that the petitioners have not produced any document to show that 1.68.050 acres of land is available for taking possession from the returnee other than the 1.68.050 acres ordered to be surrendered as per the proceedings cited third. Even in the present order, the claim made by the petitioner is not decided on the merits. The petitioner claims under a document executed by the declarant only after 1.1.1970. There is no discussion whether the

petitioner has proved that she was in possession before the commencement of the Kerala Land Reforms Act and whether she was entitled to fixity of tenure. It is also not stated whether any documentary evidence was produced by the petitioner to prove payment of pattom and payment of land revenue. There is no discussion in the order as to what right the petitioner claims and how she sought to establish it. Since the Taluk Land Board has not considered the case of the petitioner on the merits, I have no other alternative, but to set aside the order impugned, in so far as it relates to the petitioner, and direct a fresh consideration by the Taluk Land Board. Had the Taluk Land Board taken care to consider the case put forward by the petitioner and other claimants and to decide the case on the merits, probably a finality would have reached in respect of the case. In spite of the successive remand orders, the Taluk Land Board has not cared to decide the case on the merits with reference to the documentary and/or oral evidence in the case. The records do not indicate that oral evidence was adduced by any of the parties.

4. Another important aspect which came to my notice, though not stated either by the learned counsel for the petitioner or by the learned Government Pleader, is that against the order, dated 21.6.1999, which is the same order which is challenged in this Revision, Rajesh Prabhu had filed C.R.P.No.2117 of 1999 and that Revision was disposed of by the

order, dated 19.7.2001. The order, dated 19.7.2001, reads as follows:

“Petitioner has approached this Court earlier in C.R.P.No.522 of 1986. In that judgment, in paragraph 4 it is stated petitioners have already surrendered some land. What remains to be surrendered measures 1.68.050 acres in extent. The above extent can be taken from the land mentioned above and comprised in Sy.Nos.125/2, 125/3, 60/1, 6 and 7. This aspect has not been considered by the Taluk Land Board properly. This is a matter which requires to be considered by the Taluk Land Board.

2. The case of the petitioner is that, subsequent to the remand, petitioner got a notice to be present on 30.1.1990 at 2.30 p.m. for the purpose of measuring the properties and the petitioner was present. According to the petitioner no official of the Taluk Land Board came for survey. The contention is that, without conducting actual survey, an order has been passed directing the petitioner to surrender the land as per the earlier order. On a perusal of the files, it is not seen whether any survey was conducted. Hence, I am of the view that order of the Taluk Land Board requires reconsideration. Hence, the impugned order is set aside. The Taluk Land Board is directed to pass fresh orders in the light of the directions in C.R.P.No.522 of 1986. Learned counsel for the petitioner stressed the fact that earlier the Tahsildar t has reported that lands are available for surrender in Sy.Nos.125/2 and 125/3. That aspect will also be considered at the time of survey.

With the above directions, the C.R.P is disposed of.”

5. These circumstances also would necessitate that this Revision also should be allowed and the matter should be remanded to the Taluk Land Board for fresh disposal. Yet another circumstance to be noticed is that the learned counsel for the petitioner submitted that the petitioner is entitled to the benefits of Act 21 of 2006. As per the Kerala Land Reforms (Amendment) Act, 2005 (Act 21 of 2006), Section 7E was inserted. As

per the same amendment, sub-section (4) of Section 84 was also inserted. These provisions read as follows:

"7 E. Certain persons who acquired lands to be deemed tenants:-- Notwithstanding anything to the contrary contained in section 74 or section 84 or in any other provisions of this Act, or in any other law for the time being in force or in any contract, custom or usage, or in any judgment, decree or order of any court, tribunal or other authority, a person who at the commencement of the Kerala Land Reforms (Amendment) Act, 2005, is in possession of any land, not exceeding four hectares in extent, acquired by him or his predecessor-in-interest by way of purchase or otherwise on payment of consideration from any person holding land in excess of the ceiling area; during the period between the date of the commencement of the Kerala Land Reforms Act, 1963 (1 of 1964), and the date of commencement of the Kerala Land Reforms (Amendment) Act, 2005, shall be deemed to be a tenant."

"84 (4) Notwithstanding anything contained in sub-sections (1), (1 A) or (2), or in any judgment, decree, or order of any court, tribunal or other authority, no acquisition of land referred to in section 7E shall be deemed to be invalid, or ever to have been invalid by reason only of the fact that the land so acquired was found included as, or forming part of, the land liable to be surrendered by the transferor as excess land under the provisions of this Act and no suit or other proceedings including proceedings for eviction relating to the said land shall be instituted, maintained or continued in any court or tribunal against any person who is a deemed tenant under section 7E and every such suit or proceedings pending shall stand abated;

Provided that, no ceiling cases wherein excess land has been physically taken over and distributed to landless labourers or reserved for public purposes as provided in this Act shall be reopened.

Provided further that if the Taluk Land Board is satisfied that the transfer of land made by a person, in possession of excess land is calculated to defeat the ceiling provisions, it may take into account the land so transferred

in determining his ceiling area and may direct him to surrender such extent of land held or possessed by him.

Provided also that no ceiling cases or proceedings in which any land has already been surrendered by, or assumed from, a person as excess land before the commencement of the Kerala Land Reforms (Amendment) Act, 2005, shall be reopened.”

The Taluk Land Board shall consider the question whether the petitioner is entitled to the benefits of Section 7E of the Kerala Land Reforms Act.

For the aforesaid reasons, the Civil Revision Petition is allowed, the order passed by the Taluk Land Board, dated 21.6.1999, is set aside and the matter is remanded to the Taluk Land Board for fresh disposal in accordance with law and in the manner indicated above.

(K.T.SANKARAN)
Judge

ahz/

K.T.SANKARAN, J.

C.R.P.NO. 229 OF 2000 E

ORDER

22nd November, 2007
